

PART C SAFEGUARDS

“Procedural safeguards” are rights of parents/guardians with regard to their infants and toddlers with disabilities or developmental delays. These safeguards help protect their role as partners with decision-makers in early intervention. Under the law, these rights and safeguards must be explained to parents/guardians so that they are fully informed of their role and how the early intervention system works. These rights are so important that the service coordinator must review them with parents/guardians before the program of services begins and at least once each year afterwards. These rights must be provided in writing, as well as explained.

Prior Written Notice (34 CFR 303.403): Families must be provided with advance written information about any evaluations, services or other actions proposed to be taken that will affect the child or family. Written notice must be provided before an evaluation, the determination of eligibility, the development of an IFSP, or a change in services or placement/setting. The notice must include the action that is being proposed or refused, the reasons for taking or not taking the action, and all procedural safeguards available to contest the action, including how to file a complaint and the timeline for filing a complaint.

Use of Primary Language or Mode of Communication (34 CFR 303.401 & .403): It is the family’s right to thoroughly understand all activities and written records about their child and family. If the family prefers another language or way of communicating (such as sign, Braille, etc.), an interpreter, signer, or person who speaks their primary language must be provided, if at all possible. Families have a right to understand each step of the process and all the information so that they can be informed team members and decision-makers.

Written Consent (34 CFR 303.404): The early intervention system needs the permission of parents/guardians to take any action affecting their child. Parents/guardians must give their consent in writing before their child is evaluated or services are provided. Parents/guardians must understand what happens if they do or do not provide their consent.

Confidentiality and Release of Information (34 CFR 303.401-.404): No information can be provided to anyone, including early intervention personnel or programs, without written permission from the parents/guardians for the release of their child’s records. Any records that the early intervention system develops about the family or child also cannot be shared with anyone unless the parents/guardians give their written permission. However, this information can be released only if it is ordered to be released by a judge who has jurisdiction over a case involving the child and family.

Examine Records (34 CFR 303.402)

The early intervention record is the family’s record, and they can see anything in it. If families do not understand the way records are written, they have the right to have the information explained to them. If the parents/guardians disagree with something in the record, they may ask that it be removed or changed. If early intervention personnel do not agree to remove or change the information, parents/guardians may add their comments to the record, and/or request a hearing under the Family Educational Rights and Privacy Act (FERPA).

Be an Equal Partner in Developing the IFSP (34 CFR 303.401-.405): The parents/guardians are key members of the team that develops the IFSP. The IFSP must reflect the family's goals, priorities and concerns. Only family members can provide this essential information. Parents/guardians must be invited to attend any IFSP meeting, and given sufficient advance notice so that they can make arrangements to attend. Any meetings must be held at a time and place convenient to the family. Contributions of family members must be respected by the other members of the IFSP team.

Accept or Decline Services Without Jeopardy (34 CFR 303.405): Parents/guardians decide with the other members of the team which services can best help them to accomplish the outcomes that they want for their child and family. Parents/guardians must be asked to provide consent for those services that they want. Parents/guardians do not have to agree to all the services that are recommended. Parents/guardians can say no to some services and still get the services they do want. If parents/guardians decide at a later date that they want to try the other recommended services, they can provide their consent at that time. Parents/guardians cannot be penalized or punished for refusing some or all of the recommended services.

Procedures for Resolving Complaints (34 CFR 303.402): There are three methods of resolving complaints under the early intervention system: mediation, impartial hearing, and complaint resolution. A brief description of these three methods is summarized in "Description of Options to Resolve Disputes."

At a mediation or hearing, parents/guardians have the right to:

- Request interpretive, translation, or alternative communication services;
- Have the mediation or hearings held at a time and location reasonably convenient to them;
- Bring a friend or family member and/or be accompanied and advised by a lawyer or advocate;
- Review their child and family's entire file;
- Have all proceedings maintained confidentially;
- Withdraw at any time;
- Have the process, including a written documentation of any decision or agreement reached, completed within 30 calendar days of the receipt of their written request;
- Receive a copy of any agreement or decision including findings of fact and law;
- Have the terms of any agreement or decision reflected in their IFSP.

In addition, at a hearing, parents/guardians have the right to:

- Testify, present evidence and witnesses, and question all witnesses;
- Compel witnesses to attend the hearing;
- Receive all evidence, including documents and a list of witnesses, from the other side at least five working days prior to the hearing;
- Exclude any evidence that was not given to them at least five calendar days prior to the hearing;
- Receive a tape recording or a transcript of the hearing, whichever they choose, at no charge.

Eligibility, placement, or services cannot be changed during mediation, due process, or complaint investigation unless both parties agree. However, parents/guardians can always withdraw their child and family from early intervention services at any time without penalty. If the dispute involves an initial IFSP, the child and family must receive any services that are not in dispute.